

No. 85-521

Supreme Court, U.S.

F I L E D

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CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1985

OTIS R. BOWEN, SECRETARY OF HEALTH AND
HUMAN SERVICES, ET AL., APPELLANTS

v.

PUBLIC AGENCIES OPPOSED TO SOCIAL
SECURITY ENTRAPMENT, ET AL.

UNITED STATES OF AMERICA, ET AL., APPELLANTS

v.

STATE OF CALIFORNIA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOINT APPENDIX

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

No. Civil S-83-406 LKK

PUBLIC AGENCIES OPPOSED TO SOCIAL
SECURITY ENTRAPMENT, ET AL., PLAINTIFFS

v.

MARGARET HECKLER, SECRETARY, DEPARTMENT OF
HEALTH AND HUMAN SERVICES, ET AL., DEFENDANTS

RELEVANT DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
1983		
4-22	1	Complaint, sums iss'd, filed ref to mag
5-13	2	AMENDED COMPL; summ's iss'd
6-9		LDG: sitp ext time to ans
6-10	3	ORDER: ext time to ans to 7/12/83 to ans
6-11	4	ANSWER
7-18	5	Deft's stip to ext time to resp to 7/26/83
7-25	6	ANSWER (Fed defts)
8-29	7	Pltf's notc & mot/PI for 9/26/83 at 10; p/a
9-14	8	ORDER: PI vacated; mots due 10/17/83; hrg set 11/16/83 at 9
9-26		MINUTES: mots off calendar
10-17	9	Fed deft's mot/SJ for 11/16/83 at 9

DATE	NR.	PROCEEDINGS
1983		
	10	Pltf's note & mot/SJ for 11/16/83 at 9; p/a; aff
	11	Pltf's exhibit a to declar of R. Baker in support
10-31	12	Deft's note & mot/dism for 11/16/83 at 9
	13	Real Parties memo of p/a in oppo to mot/SJ etc
	14	Pltf's memo in oppo to mot/SJ
11-7		LDG: stip ext time
11-8	15	ORDER: ext time to reply to x-mot/SJ to 11/9/83
11-9	16	Fed deft's reply to pltf oppo to SJ mot
	17	Pltf's reply memo of defts in oppo to pltf's mot
	18	Pltf's oppo to fed deft mot/dism and reply to oppo to pltf's mot/SJ
11-16		MINUTES: pltf and deft mot/SJ; dism and PI submitted; ord by crt
11-17	19	ORDER: adding pltf's; pltf atty to amend amended compl
11-30		LDG: stip ext time to file brief
12-7	20	Pltf's post-hrg mem re: mot/PI and SJ
	21	Pltf's affs
	22	Pltf's exhibits A and B submitted w/pltf memo re: mots
	23	Fed Deft's supmntal oppo to pltf's mot/PI
12-8	24	ORDER: ext time to file briefs
12-14	25	Pltf's reply to supmntal oppo to mot PI
	26	Pltf's aff of R. Ramirez in support of mot/PI
12-29	27	Fed deft's supmntal oppo to mot/SJ

DATE	NR.	PROCEEDINGS
1984		
1-4	28	Pltf's amendment to Amended Complaint (add pltf's)
3-23		Rec'd ltr fr G. Hollows to N. Camp (LKK)
1985		
3-4	29	ORDER: USA to notify crt re Commerce Clause w/i 30 days; parties to submit briefs re Garcia w/i 45 days
3-12	30	ORDER: previous ord of crt dated 3/4/85 is VACATED; parties may file briefs re Garcia; briefs due w/i 30 days; no briefs shall be longer than 25 pages
4-5		LDG: ord ext time to file briefs
4-11	31	Fed deft resp to ord of 3/12/85
4-15	32	ORDER: parties grntd two weeks additional to file briefs responding to issues raised by crt
4-22	33	Pltf State of CA resp to ord of 3/12/85
4-30	34	Pltf resp to ord inviting briefs
5-29	35	ORD: relate to 83-776-LKK and 85-685-EJG and reassign 85-685 to LKK
	36	ORD: challenged act of congress is void and of no effect to these pltf's; Secretary of HHS is ord to accept notifications of withdrawal; remaining motions are moot
5-31	37	JUGTENT: 5/31; note sent
6-27	38	NOTICE OF APPEAL to Supreme Court
7-26	39	NOTICE OF APPEAL to Federal Circuit
12-5		Rec'd ltr fr Edward Faircloth re cert copy attached noting probable jurisdiction

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

No. Civil S-83-776 LKK

STATE OF CALIFORNIA, PLAINTIFF

v.

UNITED STATES OF AMERICA, ET AL., DEFENDANTS

RELEVANT DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
1983		
7-14	1	COMPLAINT; summs iss'd (to LKK)
	2	Pltf's note of related cases w/83-406 LKK
8-12	3	Rtn summons—DAG—7/15/83
	4	Rtn summons—HHS—7/15/83
	5	Rtn summons—HHS—7/15/83
9-14	6	ANSWER (HHS)
	7	ORDER: set hrg 11/16/83 at 9 for mots to be filed by 10/17/83
10-17	8	Pltf's note & mot/SJ for 11/16/83 at 9
	9	Deft's mot/SJ for 11/16/83 at 9
10-20		Rec'd ltr fr P. Dobson re: corrections to mot/SJ
10-31	10	Deft's note & mot/dism for 11/16/83 at 9
	11	Pltf's memo of p/a in oppo to mot/SJ
11-7		LDG: stip ext time
11-8	12	ORDER: ext time to reply to x-mot/SJ to 11/9/83

DATE	NR.	PROCEEDINGS
1983		
11-9	13	Fed deft's reply to pltf's oppo to SJ mot
	14	Pltf memo of p/a in oppo to mot/dism
11-10		Rec'd memo fr P. Dobson re: memo declar of serv
	15	Corrected declar of serv
11-16		MINUTES: deft & pltf mot/SJ; dism; PI submitted 12/16/83; ord by crt
1984		
6-5		Rec'd ltr fr Albert Clark re decision (LKK)
3-4	16	ORDER: USA to notify crt re Commerce Clause w/i 30 days; parties to submit brief re Garcia w/i 45 days
3-12	17	ORDER: ord of 3/4 is vacated; parties may file briefs re Garcia w/i 30 days; no brief may be longer than 25 pages
4-5		LDG: ord ext time to file briefs
1985		
4-15	18	ORDER: parties grntd two weeks additional to file briefs responding to issues raised by crt
4-22	19	State of CA resp to ord of 3/12
4-30	20	Pltf resp to ord re briefs
5-29	21	ORD: challenged act of congress is void and of no effect to these pltf's; Secretary of HHS is ord to accept notifications of withdrawal; remaining motions are moot.
	22	ORD: relate to 83-406-LKK and 85-685 and re-assign 85-685 to LKK
5-31	23	JUDGMENT: 5/31; note sent
6-27	24	NOTICE OF APPEAL—to Supreme Court
7-26	25	NOTICE OF APPEAL: To Federal Circuit

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IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF CALIFORNIA

—
 CIVS-83-406 LKK
 —

PUBLIC AGENCIES OPPOSED TO SOCIAL SECURITY ENTRAPMENT (POSSE), an Unincorporated Voluntary Association; and YORBA LINDA LIBRARY DISTRICT, a Special District organized under the laws of the State of California; and NORTH BAKERSFIELD RECREATION AND PARK DISTRICT, a Special District organized under the laws of the State of California; and DELANO MOSQUITO ABATEMENT DISTRICT, a Special District organized under the laws of the State of California; and KATHERINE T. CITIZEN, in her capacity as Library Director of the YORBA LINDA LIBRARY DISTRICT, and in her capacity as an individual; and WILLIAM RASMUSSEN, in his capacity as General Manager of the NORTH BAKERSFIELD RECREATION AND PARK DISTRICT, and in his capacity as an individual; and MARGIE HUNT, in her capacity as Acting Director of DELANO MOSQUITO ABATEMENT DISTRICT, and in her capacity as an individual, PLAINTIFFS

vs.

THE UNITED STATES OF AMERICA; and MARGARET HECKLER, in her capacity as Secretary of the Department of Health and Human Services, United States Government, and JOHN SVAHN, in his capacity as Undersecretary of the Department of Health and Human Services, United States Government, and in his capacity as Commissioner of the Social Security Administration, United States Government, DEFENDANTS

THE STATE OF CALIFORNIA; GEORGE DEUKMEJIAN, in his capacity as Governor of the State of California and MICHAEL FRANCHETTI, in his capacity as Director of Finance for the State of California; and BOARD OF ADMINISTRATION, PUBLIC EMPLOYEES' RETIREMENT SYSTEM, STATE OF CALIFORNIA; and ROBERT F. CARLSON, BILL D. ELLIS, MICHAEL FRANCHETTI, JAKE PETROFINO, PRESCOTT R. REED, WILSON C. RILES, JR., MEL REUBEN, JACK G. WILLARD, BRENDA Y. SHOCKLEY, and SUSAN TOHBE in their capacity as members of the Board of Administration, Public Employees' Retirement System of the State of California, REAL PARTIES IN INTEREST

—
 AMENDED COMPLAINT FOR DECLARATORY RELIEF;
 AND PRELIMINARY AND PERMANENT INJUNCTIVE
 RELIEF; AND FOR SPECIFIC PERFORMANCE
 OF CONTRACT

COMPLAINT FOR:

A. *DECLARATORY JUDGMENT* THAT THE 1983 AMENDMENTS TO SECTION 218(g) OF THE SOCIAL SECURITY ACT ARE UNCONSTITUTIONAL IN THAT THEY:

1. DEPRIVE DEFENDANTS OF THEIR CONTRACT RIGHTS WITHOUT DUE PROCESS OF LAW (FIFTH AMENDMENT); and
2. DENY THE INDIVIDUAL PLAINTIFFS THE EQUAL PROTECTION OF LAW (FIFTH AMENDMENT); and
3. ATTEMPT TO REGULATE ESSENTIAL STATE AND LOCAL GOVERNMENT FUNCTIONS IN AREAS WHICH ARE RESERVED TO THE JURISDICTION OF THE STATES (TENTH AMENDMENT).

B. PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF.

C. SPECIFIC PERFORMANCE OF CONTRACTUAL OBLIGATION OF UNITED STATES GOVERNMENT.

FACTS COMMON TO ALL CAUSES OF ACTION

1. This action arises under Section 218 of the Social Security Act, as amended in 1983 (hereinafter "Act"), which is set forth in 42 U.S.C., Sec. 418.

2. This action further arises under the Constitution of the United States and the Fifth and Tenth Amendments to the Constitution of the United States. The matter in controversy, exclusive of interest and costs, exceeds the sum of ten thousand dollars; this Court has jurisdiction under 28 U.S.C., Sec. 1331. Jurisdiction is also based on Sec. 1346 of Title 28, United States Code, which provides that the District Courts shall have original jurisdiction of any other civil action founded either upon the Constitution or any act of Congress; and on the Federal Declaratory Judgment Act (28 U.S.C., Sec. 2201 and 2202) and the laws of the United States of America.

3. The provisions of Public Law 98-21, amending Section 218 of the Act, and amending 42 U.S.C., Sec. 418 (hereafter "1983 Amendments"), which are the subject matter of this action, became effective on or about April 20, 1983. Plaintiffs challenge specifically the constitutionality of the following provisions of the Act as amended:

**Duration of Agreements for Coverage
of State and Local Employees**

Sec. 103(a). Section 218(g) of the Social Security Act is amended to read as follows:

"Duration of Agreement.

"(g) No agreement under this section may be terminated, either in its entirety or with respect to any coverage group, on or after the date of the enactment of the Social Security Amendments of 1983."

(b) The amendment made by subsection (a) shall apply to any agreement in effect under section 218 of the Social Security Act on the date of the enactment of this Act, without regard to whether a notice of termination is in effect on such date, and to any agreement or modification thereof which may become effective under such section 218 after that date.

4. Plaintiff PUBLIC AGENCIES OPPOSED TO SOCIAL SECURITY ENTRAPMENT (hereafter "POSSE") is an unincorporated voluntary association with headquarters in Sacramento, California. The individual members of POSSE include local government entities and/or agencies which share the concern that the removal of the option to withdraw from Social Security is an infringement on the constitutional rights held by and/or functions performed by state and local government entities. Among the primary purposes of POSSE is the preservation and protection of the contractual and constitutional rights of state and local governments to withdraw from the Social Security system. The interests of plaintiff POSSE and its members are and will be materially and adversely affected by the implementation of the 1983 Amendments. POSSE has a direct and substantial beneficial interest in ensuring that actions of government relative to participation of local governments in Social Security be undertaken only in conformance with applicable constitutional provisions, and in conformance with existing contractual relationships. POSSE brings this action on its behalf and on behalf of each of its member public entities.

5. Plaintiff YORBA LINDA LIBRARY DISTRICT (hereafter "YORBA LINDA"), is a Special District

organized under the laws of the State of California, serving the City of Yorba Linda, California. As a political subdivision of California, it shares in that State's sovereignty and performs essential functions which are necessary and indispensable to its existence as a political subdivision of California. Its unique needs and the needs of the people it serves vary from the needs of other political subdivisions within California and are distinct from the needs of political subdivisions of each of the other United States. Its Government structure and demography require unique policy and personnel management decisions which may vary from those of other political subdivisions within California and which in many respects differ from those made by political subdivisions of the other United States. It is not in competition with any other political subdivisions within or without California or any private enterprise when making these decisions or performing these essential functions. Instead, it acts through the republican form of its State Government in conjunction with its own Government, through officials elected by the votes of its citizens. It does not have the power, absent agreement, to enforce or effectuate its decisions beyond its State-designated jurisdictional boundaries and beyond the California borders into any other State.

6. Plaintiff NORTH BAKERSFIELD RECREATION AND PARK DISTRICT (hereafter "North Bakersfield") is a Special District organized under the laws of the State of California, serving the 120 square mile area contiguous with and north of the City of Bakersfield, California. As a political subdivision of California, it shares in that State's sovereignty and performs essential functions which are necessary and indispensable to its existence as a political subdivision of California. Its unique needs and the needs of the people it serves vary from the needs of other political subdivisions within California and are distinct from the needs of political sub-

divisions of each of the other United States. Its Government structure, geography, climate, topography, and demography require unique policy and personnel management decisions which may vary from those of other political subdivisions within California and which in many respects differ from those made by political subdivisions of the other United States. It is not in competition with any other political subdivisions within or without California or any private enterprise when making these decisions or performing these essential functions. Instead, it acts through the republican form of its State Government in conjunction with its own Government, through officials elected by the votes of its citizens. It does not have the power, absent agreement, to enforce or effectuate its decisions beyond its State-designated jurisdictional boundaries and beyond the California borders into any other State.

7. Plaintiff DELANO MOSQUITO ABATEMENT DISTRICT (hereafter, "DELANO") is a Special District, organized under the laws of the State of California, serving a 420 square mile area in the Southern San Joaquin Valley, comprising parts of Tulare and Kern County. As a political subdivision of California, it shares in that State's sovereignty and performs essential functions which are necessary and indispensable to its existence as a political subdivision of California. Its unique needs and the needs of the people it serves vary from the needs of other political subdivisions within California and are distinct from the needs of political subdivisions of each of the other United States. Its Government structure, geography, climate, topography, and demography require unique policy and personnel management decisions which may vary from those of other political subdivisions within California and which in many respects differ from those made by political subdivisions of the other United States. It is not in competition with any other political subdivisions within or without California or any private

enterprise when making these decisions or performing these essential functions. Instead, it acts through the republican form of its State Government in conjunction with its own Government, through officials elected by the votes of its citizens. It does not have the power, absent agreement, to enforce or effectuate its decisions beyond its State-designated jurisdictional boundaries and beyond the California borders into any other State.

8. Plaintiff KATHERINE T. CITIZEN is the Library Director of YORBA LINDA, and as such has responsibility for the administration of library services within the District. CITIZEN complains also in her capacity as an individual resident within YORBA LINDA, and employee of YORBA LINDA presently required to contribute money to the Social Security system.

9. Plaintiff WILLIAM RASMUSSEN is the General Manager of NORTH BAKERSFIELD, and as such has responsibility for the administration of the services rendered by that District. RASMUSSEN complains also in his capacity as an individual resident within NORTH BAKERSFIELD, and employee of NORTH BAKERSFIELD presently required to contribute money to the Social Security system.

10. Plaintiff MARGIE HUNT is the Acting Director of DELANO, and as such has responsibility for the administration of services performed by the District. HUNT complains also in her capacity as an individual resident within DELANO, and employee of DELANO presently required to contribute money to the Social Security system.

11. Defendant THE UNITED STATES OF AMERICA is a body politic and an entity capable of entering into and being bound by contractual relationships.

12. Defendant MARGARET HECKLER is the Secretary of the Department of Health and Human Services of the United States of America, who is charged by law with the implementation and enforcement of the Act.

13. Defendant JOHN SVAHN is Undersecretary of the Department of Health and Human Services and is Com-

missioner of the Social Security Administration of the United States of America, who is charged by law with the implementation and enforcement of the Act.

14. Real party in interest, The State of California, is a body politic and an entity capable of entering into and being bound by contractual relationships.

15. Real party in interest, GEORGE DEUKMEJIAN, is the duly elected and acting Governor of the State of California and is charged by Article V, Section 1 of the California Constitution to faithfully execute the laws of said State.

16. Real party in interest, MICHAEL FRANCHETTI is the duly appointed Director of the Department of Finance of the State of California and as such has the power and duty to supervise the fiscal and business policies of the State.

17. Real party in interest, BOARD OF ADMINISTRATION, PUBLIC EMPLOYEES' RETIREMENT SYSTEM, STATE OF CALIFORNIA, is that agency within the State of California which has the responsibility for administering the Social Security laws on behalf of the State of California. Said Board is comprised of ten duly appointed members as follows: ROBERT F. CARLSON, BILL D. ELLIS, MICHAEL FRANCHETTI, JAKE PETROFINO, PRESCOTT R. REED, WILSON C. RILES, JR., MEL REUBEN, JACK G. WILLARD, BRENDA Y. SHOCKLEY, and SUSAN TOHBE.

By virtue of their membership on the said Board, said real parties in interest have responsibility for administering the Social Security laws on behalf of the State of California.

18. Plaintiff Special Districts provide the following essential Government services, among others, each of which will be affected in cost or quality, or both, by the 1983 Amendments to the Act: Park maintenance and development; general recreational supervision; early childhood education programs; cultural development programs; Senior Citizens programs; organized competitive sports

and library services; educational programs; and mosquito control and abatement.

19. These essential Government services inhere in the existence of States and their political subdivisions. Without these essential Government services a State could not exist for the protection and benefit of the people within the territory of the State.

20. States and Special Districts, as political subdivisions of a State, cannot fail or refuse to provide these essential Government services consistently with provisions of State Constitutions, laws, charters, ordinance provisions and provisions of the United States Constitution.

21. Plaintiff Special Districts have exercised their sovereign judgment in establishing and seeking out benefit programs for their employees which will insure the most effective provision of essential Government services at the least cost to the taxpayers of said Plaintiffs, consistently with fairness in compensating and regulating the working hours and conditions of the employees of said Plaintiffs who provide essential Government services.

22. The Social Security Act was originally enacted in 1935. It has been amended several times since its original enactment. Under the original Act and under amendments prior to the 1983 Amendments, State and local government entities and/or agencies were specifically and unqualifiedly given the right to withdraw from the Social Security system upon specified conditions.

23. The facts set forth in this complaint demonstrate the irreparable harm imposed upon Plaintiffs for which Plaintiffs have no adequate remedy at law. Plaintiffs are entitled to the relief prayed for herein.

FIRST CAUSE OF ACTION

(DUE PROCESS OF LAW—FIFTH AMENDMENT)

24. Plaintiffs incorporate all of the allegations contained in paragraphs 1 through 23 hereof at this point by this reference.

25. On or about March 9, 1951, the United States of America (hereafter USA), acting through its authorized agent and pursuant to the provisions of the Social Security Act, entered into an Agreement with the State of California, acting through its authorized agent and pursuant to the laws of the State of California and of the United States, whereby the State of California entered the Social Security system. A copy of said Agreement is marked Exhibit A, is attached hereto and incorporated herein by this reference.

26. The said Agreement provides, at Paragraph (F) thereof, that the State "upon giving at least two years' advance notice," may terminate the Agreement and thereby withdraw from the system, "either in its entirety or with respect to any coverage group."

27. On or about August 16, 1955, the State of California, acting through its authorized agent, entered into an Agreement with Plaintiff YORBA LINDA (Mod. No. 61) by which YORBA LINDA was incorporated into the Social Security system. Said Agreement provides that YORBA LINDA, "upon giving at least two years' advance notice" may terminate the Agreement and thereby withdraw from the system. On or about October 13, 1955, the USA, acting through its duly authorized agent, signed and thereby ratified said Mod. No. 61, thereby incorporating it into the original Agreement with the State of California, and having the effect of making YORBA LINDA a party to said original Agreement between the USA and the State of California.

28. On or about March 14, 1958, the State of California, acting through its authorized agent, entered into an Agreement with Plaintiff NORTH BAKERSFIELD (Mod. No. 204) by which NORTH BAKERSFIELD was incorporated into the Social Security system. Said Agreement provides that NORTH BAKERSFIELD, "upon giving at least two years' advance notice" may terminate the Agreement and thereby withdraw from the system. On or about March 24, 1958, the USA, acting through its

duly authorized agent, signed and thereby ratified said Mod. No. 204, thereby incorporating it into the original Agreement with the State of California, and having the effect of making NORTH BAKERSFIELD a party to said original Agreement between the USA and the State of California.

29. On or about March 20, 1956, the State of California, acting through its authorized agent, entered into an Agreement with Plaintiff DELANO (Mod. No. 93) by which DELANO was incorporated into the Social Security system. Said Agreement provides that DELANO, "upon giving at least two years' advance notice" may terminate the Agreement and thereby withdraw from the system. On or about April 4, 1956, the USA, acting through its duly authorized agent, signed and thereby ratified said Mod. No. 93, thereby incorporating it into the original Agreement with the State of California, and having the effect of making DELANO a party to said original Agreement between the USA and the State of California.

30. Pursuant to the provisions of the aforementioned Agreements, during the year 1982, Plaintiffs YORBA LINDA, NORTH BAKERSFIELD, and DELANO gave notice of termination to the State of California, represented in this instance by the Board of Administration, Public Employees' Retirement System, of their intent to terminate their participation in the Social Security System, effective December 31, 1984. Said Plaintiffs complied with all of the conditions for such termination notice set forth in the Agreements.

31. By enacting Public Law 98-21, specifically the provisions set forth in paragraph 3, supra, the USA, represented by Defendants herein, has deprived or threatens to deprive said Plaintiffs of their contractual rights. By thus repudiating their contractual obligations, they have taken property of said Plaintiffs without just compensation and thereby violated Plaintiffs' rights under Amendment V to the Constitution of the United States.

SECOND CAUSE OF ACTION (EQUAL PROTECTION—FIFTH AMENDMENT)

32. Plaintiffs incorporate all of the allegations contained in paragraphs 1 through 30 hereof at this point by this reference.

33. Under the 1983 Amendments to the Act, public entities and/or agencies which already had completed the termination process, and thereby had withdrawn from the Social Security System, or which never had joined the system, were allowed to remain outside the system with no obligation to participate therein.

34. Individual employees of such entities and/or agencies are not under mandate to make contributions to the Social Security system, and are, therefore, free to use the monies which they otherwise would be forced to contribute to that system to build an estate for themselves and their heirs, according to the dictates of their judgment and desires and conscience.

35. The individual Plaintiffs herein, on the other hand, who have comparable employment with public entities and/or agencies have been deprived of the opportunity to use their money, because they are forced to contribute to the Social Security system. They thereby are being denied the equal protection of law contrary to the provisions of the Constitution of the United States.

THIRD CAUSE OF ACTION (TENTH AMENDMENT)

36. Plaintiffs incorporate all of the allegations contained in paragraphs 1 through 30 hereof at this point by this reference.

37. Under the Tenth Amendment to the Constitution of the United States, one of the most vital sovereign powers reserved to the States is the power to employ personnel to carry out essential governmental functions and to completely control the benefits of such employees,

including those similar to those covered by the federal Social Security System.

38. State and local government entities have developed policies and laws, including civil service laws, designed to take care of the unique governmental situation in each geographic and political area. The 1983 Amendments purport to nullify the ability of States and local governments to make decisions relating to retirement and other benefits for their employees.

39. Plaintiffs YORBA LINDA, NORTH BAKERSFIELD, and DELANO operate under California constitutional and statutory law provisions and local policies in providing essential governmental services and in performing other functions through their employees. Said Plaintiffs have determined that they could, by terminating their participation in the Social Security system, save money extracted from the taxpayers of their respective districts, and apply said money to other priority uses, and/or provide greater benefits for their employees at a lesser or equal cost. Pursuant to that considered decision, they filed the aforementioned notices of termination of coverage under the Social Security system.

40. The 1983 Amendments change control of State and local employee benefits from State and local governments to Federal control. For the first time in over 200 years, the Federal Government is claiming power over this vital internal State and local function. No more vital internal function of government exists for State and local governments than control of their employees and the budget items relating to said employees. By seizing control of a vital aspect of that function through the enactment of the 1983 Amendments, the USA, through its representatives named as Defendants herein, have and threaten to violate Amendment X of the U.S. Constitution.

41. By taking control over the monies which would be saved through withdrawal from the Social Security system, the USA will impair and make impossible the

use of those funds for other vital services rendered by local government entities.

42. The 1983 Amendments, if allowed to have effect, will cause Plaintiff YORBA LINDA, NORTH BAKERSFIELD, and DELANO irreparable injury and damage and will irreparably injure and damage all State and local entities situated similarly to said Plaintiffs. The said Amendments will cause either increased costs for services, or a diminishing in quality and/or quantity of service. Said Amendments further will force said Plaintiffs to forego planned services.

43. The great diversity of State and local governments makes full computation of the nationwide impact of the 1983 Amendments impossible. Plaintiffs hereby request leave to amend this complaint to incorporate representative projections of such costs at such time as they become available.

44. Plaintiffs further are irreparably harmed in that if they elect to enforce the terms of their Agreement with the Federal and State Governments, and at the end of the termination period refuse to make further contributions to the Social Security system, they will be subject to fines and other penalties, as well as civil liability. Plaintiffs have no adequate remedy at law. They are entitled to a judgment adjudicating their rights and an injunction to prevent Defendants and Real Parties in Interest from enforcing this unconstitutional act against Plaintiffs.

FOURTH CAUSE OF ACTION (SPECIFIC PERFORMANCE)

45. Plaintiffs incorporate all of the allegations contained in paragraphs 1 through 30 hereof at this point by this reference.

46. Defendants and Real Parties in Interest are obligated under the aforementioned Agreements, to allow Plaintiff Districts to terminate their Social Security participation as of December 31, 1984.

47. At the time the Agreements were entered into, they were just and reasonable to all parties involved, and the consideration therefor was adequate.

48. Plaintiffs have duly performed all of the conditions of the Agreement on their part to be performed.

49. If Defendants and Real Parties in Interest are not required to perform according to the terms of the Agreements, Plaintiffs will suffer great and irreparable injury and damage for which they have no adequate remedy at law.

WHEREFORE, Plaintiffs demand judgment against Defendants, and each of them, and against Real Parties in Interest, as follows:

1. Declaring that the 1983 Amendments to Section 218(g) of the Social Security Act are unconstitutional in that they:

- a. Deprive Plaintiffs of their contract rights without due process of law, thereby taking their property without just compensation; and
- b. Deny the individual Plaintiffs the equal protection of law; and
- c. Attempt to regulate essential and traditional State and local government functions in areas which are reserved by the Constitution to the jurisdiction of the States; and

2. Preliminary and permanent enjoining of Defendants and Real Parties in Interest from enforcing or attempting to enforce the Act against Plaintiffs or those situated similarly to Plaintiffs; and

3. Ordering Defendants and Real Parties in Interest to conform to the terms of the Agreements by allowing Plaintiffs and others similarly situated to terminate their Social Security participation pursuant to the terms of the Agreements.

4. Such additional relief as the facts alleged herein may warrant.

Dated: May 12, 1983

/s/ Ernest F. Schulzke
ERNEST F. SCHULZKE
Attorney for Plaintiffs

JOHN K. VAN DE KAMP, Attorney General
of the State of California
N. EUGENE HILL, Assistant
Attorney General
PAUL H. DOBSON, Deputy
Attorney General
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Telephone: (916) 324-5469
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CIVS-83-776 KK

STATE OF CALIFORNIA, PLAINTIFF

v.

THE UNITED STATES OF AMERICA; MARGARET HECKLER,
in her capacity as Secretary of the DEPARTMENT OF
HEALTH AND HUMAN SERVICES of the United States
of America, and JOHN SVAHN, in his capacity as Un-
dersecretary of the DEPARTMENT OF HEALTH AND HU-
MAN SERVICES, of the United States of America, and
in his capacity as Commissioner of the SOCIAL SECUR-
ITY ADMINISTRATION of the United States of America,
DEFENDANTS

[Filed July 14, 1983]

COMPLAINT FOR DECLARATORY JUDGMENT, FOR
RELIEF IN THE NATURE OF MANDAMUS, AND FOR
A PRELIMINARY AND PERMANENT INJUNCTIONS

Plaintiff alleges:

JURISDICTION

1. This action arises under section 218 of the Social Security Act as amended in 1983 (hereafter "Act"), which is set forth in title 42, United States Code, section 418. Plaintiff seeks a declaratory judgment that section 218 of the Act violates the Tenth Amendment of the United States Constitution.

2. Thus, this action further arises under the Tenth Amendment of the United States Constitution. This court has jurisdiction under title 28, United States Code, sections 1331, 1346, 1361, 2201 and 2202.

3. The provisions of Public Law 98-21, amending section 218 of the Act, and amending title 42 United States Code, section 418, which are the subject matter of this action, became effective on or about April 20, 1983. Plaintiff challenges the constitutionality of section 103(a) of Public Law 98-21 which provides:

"Sec. 103. (a) Section 218(d) of the Social Security Act is amended to read as follows:

'Duration Of Agreement

'(g) No agreement under this section may be terminated, either in its entirety or with respect to any coverage group, on or after the date of the enactment of the Social Security Amendments of 1983.'

"(b) The amendment made to subsection (a) shall apply to any agreement in effect under section 218 of the Social Security Act on the date of the enactment of this act, without regard to whether the notice of termination is in effect on such date, and to any agreement or modification thereof which may become effective under section 218 after that date."

PARTIES

4. Plaintiff, State of California, is a sovereign state of the United States of America.

5. Defendant United States of America is a body politic possessing those powers granted to it by the sovereign states of the United States and enumerated in the Constitution of the United States.

6. Defendant Margaret Heckler is the Secretary of the Department of Health and Human Services of the United States of America and is charged by law with implementation and enforcement of the Act.

7. Defendant John Svahn is Undersecretary of the Department of Health and Human Services and is Commissioner of the Social Security Administration of the United States of America, and is charged by law with the implementation and enforcement of the Act.

CLAIM FOR RELIEF

8. On or about March 9, 1951, defendant United States of America, acting by and through the Federal Security Administrator, by virtue of the authority vested in the Administrator by Section 218 of the Act, and plaintiff State of California, acting by and through the Director of Finance of the State of California by virtue of the authority of chapter 46, California Statutes of 1950, 3rd Extra Session, voluntarily entered into an agreement to provide Social Security coverage for certain public employees of the State of California, its political subdivisions and other public agencies and entities within the state. (Hereafter, such subdivisions, agencies and entities shall be referred to as "public agencies"). Since its enactment, the agreement has been modified approximately 1,212 times. All but five of these modifications involved the adding or deletion of "coverage groups" as specified in section 218 of the Act and in the agreement. Five of the modifications involved changes to the original master agreement. Attached hereto as exhibit A and

incorporated by reference herein is a copy of the original agreement and these five modifications. (Hereafter, this agreement, with its modifications, will be referred to as the "State-Federal Agreement"). Under paragraph F of the State-Federal Agreement, the plaintiff is provided the right to terminate the agreement in its entirety or as to any coverage group under certain conditions.

9. The Board of Administration of the Public Employees' Retirement System of the State of California (hereafter "Board") is an agency of the State of California which is now authorized by state law to act on behalf of the state to administer and maintain in full force the State-Federal Agreement. With respect to Social Security coverage for public employees, the plaintiff State of California, through the Board represents the interests of its employees, and the employees of the public agencies.

10. The plaintiff State of California, as an employer, has more than 100,000 employees subject to Social Security coverage under the State-Federal Agreement. In addition, there are more than 2,000 other public agencies in the plaintiff State of California which collectively employ more than 400,000 employees subject to Social Security coverage under the State-Federal Agreement.

11. Under paragraph (F) of the State-Federal Agreement, the Board, acting on behalf of the plaintiff State of California, submitted notices of voluntary termination of Social Security coverage by certain public agencies which have not yet terminated Social Security coverage. Specifically, 71 of these agencies have given notices of termination effective December 31, 1983; 117 of these agencies have given notices of termination effective December 31, 1984; and 3 of these agencies have given notices of termination effective December 31, 1985. Attached hereto is Exhibit B and incorporated by reference herein is a list of these three categories of agencies. All but one of such notices were accepted by the Social Security Administration. As a result of the passage of

Public Law 98-21, the Social Security Administration has refused to accept the last notice which was submitted on behalf of the Sacramento Municipal Utility District on or about March 25, 1983.

12. Public Law 98-21 to the extent it amends section 218 of the Act, purports to invalidate the notices of termination set forth in paragraph 11 and further purports to prohibit the plaintiff State of California from terminating the State-Federal Agreement in its entirety or as to any coverage group.

13. In employing individuals to perform its governmental functions, the plaintiff State of California acts in its sovereign capacity. The determination of the compensation paid and the disability and retirement benefits of those employees is a sovereign function of the plaintiff State of California. The decision of whether the employees are to receive Social Security coverage as a condition of employment with the plaintiff, is a decision vested solely within its sovereign authority.

14. Adequate compensation, disability and retirement benefits for public employees employed by various public agencies in the plaintiff State of California is a matter of sovereign state interest. In entering the State-Federal Agreement and in maintaining it, the plaintiff has acted in its capacity as sovereign state on behalf of not only its own employees, but the other public employees employed by the public agencies subject to Social Security coverage.

15. Defendant United States of America, amending section 218 of the Act by Public Law 98-21, has significantly altered and displaced the ability of the plaintiff State of California to structure its relationships with its employees who perform sovereign functions of the state of administering the public law and furnishing public services. This amendment has also altered and displaced the employer-employee relationship of the public agencies of the plaintiff State of California which have employees subject to Social Security coverage. In so

amending section 218, defendant United States of America has acted in excess of the powers granted to it by the United States Constitution and has infringed upon powers reserved to the plaintiff State of California under the Tenth Amendment of that Constitution.

16. Additionally, defendant United States of America in amending section 218 of the Act by Public Law 98-21, has attempted to impair its own contractual agreement with plaintiff State of California in excess of any powers granted to it by the United States Constitution and in violation of the Tenth Amendment of that Constitution.

17. Defendants Margaret Heckler and John Svahn have taken measures to enforce section 218 of the Act as most recently amended.

18. The enforcement of section 218 as amended immediately impairs the ability of the plaintiff State of California, as well as the other public agencies to make and implement decisions with respect to compensation, disability and retirement benefits for their respective employees. As to the public agencies listed in Exhibit R, the enforcement of section 218 as amended interferes with each of those agencies' ability to plan for or implement compensation, disability and retirement plans for their employees whose Social Security coverage was intended to be terminated. For the plaintiff State of California and the other public agencies which have not yet filed a notice of termination pursuant to the State-Federal Agreement, section 218 as amended interferes with the immediate ability of each to consider, as an option, filing such a notice in connection with the planning of compensation, disability and retirement benefits for employees. Because of the substantial constitutional question involved and the present and immediate interference with the sovereign functions of the plaintiff State of California and the various public agencies it represents, plaintiff is entitled to an adjudication of its rights and is entitled to an injunction restraining the enforcement, operation and execution of section 218 of the Act, as amended by

Public Law 98-21, on the ground that it is unconstitutional.

19. Plaintiff has no plain, adequate or speedy remedy to redress the injury suffered by defendants' unlawful conduct and, therefore, requests appropriate injunctive relief.

WHEREFORE, plaintiff prays for the following relief:

1. That enforcement, operation and execution of section 218 of the Social Security Act as amended by Public Law 98-21 be held to be void as repugnant to the Constitution of the United States;

2. That the court enter interlocutory, preliminary and permanent injunctions and a decree restraining the defendants from enforcing said act against plaintiff; and

3. For such other and additional relief as the facts alleged herein warrant.

DATED: July 14, 1983

Respectfully submitted

JOHN K. VAN DE KAMP
Attorney General

By /s/ Paul H. Dobson
PAUL H. DOBSON
Deputy Attorney General
Attorneys for Plaintiff

EXHIBIT A

AGREEMENT

THIS AGREEMENT entered into this 9th day of March, 1951, by and between the United States of America, acting by and through Oscar R. Ewing, Federal Security Administrator, by virtue of authority vested in him by Section 218 of the Social Security Act, as amended, party of the first part hereinafter called "Administrator" and the State of California, acting by and through the Director of Finance of the State of California, by virtue of the authority granted him by Chapter 46, California Statutes of 1950, 3rd Extra Session, party of the second part hereinafter called "State";

WITNESSETH:

The parties hereto, pursuant to authority conferred upon them by law, agree to extend, in conformity with Section 218 of the Social Security Act, the insurance system established by Title II of the Social Security Act to all services performed by employees of the State and employees of those political subdivisions of the State listed in the Appendix attached hereto and made a part hereof, according to the following terms and conditions:

(A) Definitions

For purposes of this agreement—

(1) The term "political subdivision" includes an instrumentality of (a) the State, (b) one or more political subdivisions of public agencies of the State, or (c) the State and one or more of its political subdivisions or public agencies.

(2) The term "employee" means an employee as defined in Section 210(k) of the Social Security Act and shall include an officer of the State or of a political subdivision.

(3) The term "retirement system" means a pension, annuity, retirement or similar fund or system established by the State or by a political subdivision thereof.

(B) Services covered.

This agreement includes all services performed by individuals as employees of the State and as employees of those political subdivisions listed in the Appendix attached hereto, other than services expressly excluded therein and except the following:

1. Any service performed by an employee in a position covered by a retirement system on the date the agreement is made applicable to the coverage group in which such employee is included.
2. Service performed by an employee who is employed to relieve him from unemployment.
3. Service performed in a hospital, home or other institution by a patient or an inmate thereof.
4. Covered transportation service (as defined in Section 210(1) of the Social Security Act), and
5. Service (other than agricultural labor or service performed by a student) which is excluded from employment by any provision of Section 210(a) of the Social Security Act, other than paragraph eight (8) of such section.

(C) Contributions by the State.

The State will pay to the Secretary of the Treasury, at such time or times as the Administrator may by regulation prescribe, amounts equivalent to the sum of the taxes which would be imposed by Sections 1400 and 1410 of the Internal Revenue Code if the services of employees covered by this agreement constituted employment as defined in Section 1426 of such code.

(D) Compliance with regulations.

The State will comply with such regulations as the Administrator may prescribe to carry out the purposes of Section 218 of the Social Security Act.

Provided, however, that the political subdivisions covered by this agreement, or any modification hereof, shall be permitted to deal directly with the Bureau of Old Age and Survivors Insurance regarding all matters concerning old age and survivors insurance benefits.

And provided further, that the State shall not (a) be required in any report or return filed by the State for all employees covered by the agreement, or any modification thereof, to list such employees in a continuous or single listing in employee account number, alphabetical or similar order, or (b) be required to supply statistical data by way of job classification breakdown of the employees covered by this agreement, or any modification thereof.

(E) Modification.

This agreement shall be modified at the request of the State to include political subdivisions or coverage groups, or both, in addition to those political subdivisions in the appendix attached hereto, or to include additional services not now included in this agreement, such modification to be consistent with the provisions of Section 218 of the Social Security Act.

(F) Termination by the State.

The State, upon giving at least two years' advance notice in writing to the Administrator, may terminate this agreement, either in its entirety or with respect to any coverage group, effective at the end of a calendar quarter specified in the notice, provided, however, that the agreement may be terminated in its entirety only if it has been in effect not less than five years prior to receipt of such notice, and provided further that the agreement may be terminated with respect to any coverage group only if it has been in effect with respect to such coverage group for not less than five years prior to receipt of such notice.

(G) Termination by the Administrator.

If the Administrator, after reasonable notice and opportunity for hearing to the State, finds that the State has failed or is no longer legally able to comply substantially with any provision of this agreement or of Section 218 of the Social Security Act, he shall notify the State by giving notice in writing to the Director of Finance of the State, at Sacramento, California, that this agreement will be terminated in its entirety, or with respect to any one or more coverage groups, at such time designated in, but not later than two years from the date of such notice, as he deems appropriate, unless prior to such termination date he finds that there no longer is any such failure or that the cause for such legal inability has been removed. If, under this part or part (F), an agreement is terminated with respect to any coverage group, such termination shall be effective also with respect to any additional services in such coverage group included in the agreement pursuant to any modification thereof under part (E).

(H) Failure to make payment when due.

In case the State does not make, at the time or times due, the payments provided for under this agreement, there shall be added, as part of the amounts due, interest at the rate of 6 per centum per annum from the date due until paid, and the Administrator may, in his discretion, deduct such amounts plus interest from any amounts certified to the Secretary of the Treasury for payment to the State under any provision of the Social Security Act. Amounts so deducted shall be deemed to have been paid to the State under such provision of the Social Security Act.

(I) Effective Date.

This Agreement shall be effective as of January 1, 1951.

UNITED STATES OF AMERICA

By /s/ John L. Thurston
Acting (Federal Security
Administrator)

STATE OF CALIFORNIA

By /s/ James S. Dean
JAMES S. DEAN
Director of Finance

MODIFICATION NO. 48
TO CALIFORNIA STATE SOCIAL SECURITY
AGREEMENT

The Secretary of Health, Education, and Welfare and the State of California acting through its representative designated to administer its responsibilities under the agreement of March 9, 1951, hereby accept the following amendments to said agreement:

I

The opening paragraph of said agreement is amended by changing the phrase, "The Federal Security Administrator, hereinafter called the Administrator" to read:

"The Secretary of Health, Education and Welfare, hereinafter called the Secretary";

and Parts (C), (D), (F), (G), and (E) of said agreement are amended by changing the term "Administrator" wherever it appears in such Parts to read:

"Secretary"

II

Paragraph (1) of Part (B) of said agreement (relating to the exclusion of services in positions subject to a retirement system) is amended by changing such paragraphs to read:

"(1) (a) Any service other than service described in subdivision (b) (2) of this paragraph, performed by an employee in a policeman's or fireman's position which, on the date this agreement is made applicable to the coverage group (as defined in section 218(b) (5) of this Act) to which he belongs, is covered by a retirement system; and

(b) Any service performed by an employee in a position which is not a policeman's or fireman's posi-

tion and which, on September 1, 1954, is covered by a retirement system other than—

"(1) Service performed by an employee in a position which is included in a separate coverage group established by section 218(d) (4) of the Social Security Act; or

"(2) Prior to January 1, 1958, service performed by an employee as a member of a coverage group (as defined in section 218(b) (5) of the Act) with respect to which this agreement was in effect on September 1, 1954, in a position—

"(A) to which this agreement is not otherwise applicable;

"(B) which was covered by a retirement system on the date the agreement was made applicable to such coverage group, and

"(C) which, by reason of action taken prior to September 1, 1954, by the State or any of its political subdivisions, as the case may be, is not covered by a retirement system on the date the agreement is made effective to such service; or

"(3) Service performed by an individual as a member of a coverage group (as defined in section 218(b) (5) of the Act) with respect to which this agreement is in effect, in a position covered by a retirement system, if the individual performing such service was ineligible to become a member of such retirement system on the date the agreement was made applicable to such coverage group (or, if later, the date on which such individual first occupied such position)."

Part (C) of said agreement (relating to contributions by the State) is amended to read:

"The State will pay to the Secretary of the Treasury, at such time or times as the Secretary of Health, Education and Welfare may by regulation prescribe, amounts equivalent to the sum of the

taxes which would be imposed under the Federal Insurance Contributions Act if the services of employees covered by this agreement constituted employment as defined in such act."

Part (F) of said agreement is amended by adding at the end thereof the following two new sentences:

"The State may also terminate the applicability of this agreement to services performed by employees referred to in Part (B) (1) (b) (3) of this agreement if it is provided in the modification to the agreement pursuant to which this agreement is made applicable to such services, that the services of such individuals shall cease to be covered by this agreement when they become eligible to be members of the retirement system with respect to which they were ineligible for membership on the date the agreement was made applicable as to such services. The preceding sentence shall not operate to terminate coverage of the services of such individuals, however, if, on the date any such individuals become eligible to be members of such retirement system, this agreement has been otherwise so modified as to extend coverage thereunder to services performed by individuals in a coverage group (as defined in section 218(d) (4) of the Social Security Act) which includes members of such retirement system."

Dated this 16th day of March, 1955.

STATE OF CALIFORNIA

JOHN M. PEIRCE
Director of Finance

By /s/ A. Earl Washburn
A. EARL WASHBURN
Deputy Director of Finance

Dated this 13th day of April, 1955.

SECRETARY OF HEALTH, EDUCATION
AND WELFARE

By /s/ Ewell T. Bartlett
EWELL T. BARTLETT
Assistant Director
Bureau of Old-Age and
Survivors Insurance

MODIFICATION NO. 254
TO CALIFORNIA STATE SOCIAL SECURITY
AGREEMENT

The Secretary of Health, Education, and Welfare and the State of California, acting through its representative designated to administer its responsibilities under the agreement of March 9, 1951, hereby accept the following amendments to said agreement:

Paragraph (1) (b) of said agreement (Services Covered) is amended to read:

"(1) (b) Any service other than services described in Section 218(d) (8) of the Act performed by an employee in a position which is not a policeman's or fireman's position and which, on September 1, 1954, or, if subsequent to September 1, 1954, the date this agreement is made applicable to the coverage group (as defined in Section 218(b) (5) of the Act) to which he belongs, is covered by a retirement system other than—"

Approved for the State of California this 15th day of December, 1958.

BOARD OF ADMINISTRATION
STATE EMPLOYEES'
RETIREMENT SYSTEM

By /s/ William E. Payne
WILLIAM E. PAYNE
Executive Officer

Approved this 30th day of Dec., 1958.

SECRETARY OF HEALTH, EDUCATION
AND WELFARE

By /s/ Thomas C. Parrott
THOMAS C. PARROTT
Acting Assistant Director
Bureau of Old-Age and
Survivors Insurance

MODIFICATION NO. 300
TO CALIFORNIA STATE SOCIAL SECURITY
AGREEMENT

The Secretary of Health, Education, and Welfare and the State of California, acting through its representative designated to administer its responsibilities under the Agreement of March 9, 1951, hereby accept the following amendments to said Agreement:

Paragraph (1) (a) of Part (B) of said Agreement (Services Covered) is amended to read:

"(1) (a) Prior to September 16, 1959, any service other than service described in subparagraph (c) (2) of this paragraph performed by an employee in a policeman or fireman position which, on the date this Agreement is made applicable to the coverage group (as defined in Section 218(b) (5) of the Act) to which he belongs, is covered by a retirement system;

(b) "On and after September 16, 1959, any service other than service described in Section 218(d) (8) of the Act or subparagraphs (c) (1) or (c) (2) of this paragraph performed by an employee in a policeman or fireman position which, on the date this Agreement is made applicable to the coverage group (as defined in Section 218(b) (5) of the Act) to which he belongs, is covered by a retirement system in effect on or after September 16, 1959; and"

The present paragraph (b) of Part B (1) is relettered as paragraph (c).

Approved for the State of California this 11th day of December, 1959.

BOARD OF ADMINISTRATION
STATE EMPLOYEES'
RETIREMENT SYSTEM

By /s/ William E. Payne
WILLIAM E. PAYNE
Executive Officer

Approved this 21 day of December, 1959.

SECRETARY OF HEALTH, EDUCATION
AND WELFARE

By /s/ Louis Zawatzky
LOUIS ZAWATZKY
Acting Assistant Director
Bureau of Old-Age and
Survivors Insurance

MODIFICATION NO. 417
TO CALIFORNIA STATE SOCIAL SECURITY
AGREEMENT

The Secretary of Health, Education and Welfare and the State of California acting through its representative designated to administer its responsibilities under the agreement of March 9, 1951, hereby accept the following amendment to said agreement:

Paragraph (1) (c) of Part (B) of the agreement as revised by Modification 48, 254, and 300 is further amended by striking out the period at the end of subparagraph (3) and inserting in lieu thereof “; or” and by inserting after subparagraph (3) the following new subparagraph:

“(4) Service performed by an individual in a position under a retirement system as a member of a coverage group established pursuant to Section 102(k) of P. L. 86-778.”

* * *

Approved for the State of California this 21st day of December, 1961.

BOARD OF ADMINISTRATION
STATE EMPLOYEES'
RETIREMENT SYSTEM

By /s/ William E. Payne
WILLIAM E. PAYNE
Executive Officer

Approved for the Secretary of Health, Education, and Welfare this 27th day of Dec., 1961.

SECRETARY OF HEALTH,
EDUCATION AND WELFARE

By /s/ Thomas C. Parrott
THOMAS C. PARROTT
Assistant Director
Bureau of Old-Age and
Survivors Insurance

MODIFICATION NO. 745
TO CALIFORNIA STATE SOCIAL SECURITY
AGREEMENT

The Secretary of Health, Education, and Welfare and the State of California, acting through its representative designated to administer its responsibilities under the agreement of March 9, 1951, hereby accept the following amendment to said agreement:

Part (B) of said agreement (Services Covered) is amended by adding at the end thereof the following new paragraph:

"(6) Effective March 31, 1968, services performed by election officials or election workers for each calendar quarter in which the remuneration paid for such services is less than \$50."

Approved for the State of California this 29th day of March 1968.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES'
RETIREMENT SYSTEM

By /s/ William E. Payne
WILLIAM E. PAYNE
Executive Officer

Approved this 25th day of April 1968

SECRETARY OF HEALTH,
EDUCATION AND WELFARE

By /s/ Idella Hardy
IDELLA HARDY
Director
Bureau of Retirement and
Survivors Insurance
Social Security
Administration

EXHIBIT B

SCHEDULE OF CALIFORNIA PUBLIC AGENCIES
REQUESTING VOLUNTARY TERMINATION OF
SOCIAL SECURITY

EFFECTIVE DATE: 12/31/83 (71 agencies)

Padre Dam Municipal Water District
Butte County Housing Authority
Yucca Valley Park & Recreation District
City of South San Francisco
Paradise Recreation & Park District
Community Development Commission of the
County of Mendocino
City of Ontario
City of Vallejo
Marinwood Community Services District
Orland-Artois Water District
Paradise Irrigation District
City of Willits
Tulare Mosquito Abatement District
Strawberry Recreation District
Kaweah Delta Hospital District
Tehachapi Valley Hospital District
County of Del Norte
City of Merced
Home Gardens Sanitary District
County of Fresno
Fresno Irrigation District
Sierra View Hospital District
Rubidoux Community Services District
City of Monte Sereno
San Lorenzo Valley Water District
County of San Diego
Marin Municipal Water District
Coalinga Hospital District
Los Angeles County Law Library
City of Sanger

Solano County Mosquito Abatement District
 City of Fort Bragg
 Eden Township Hospital District
 City of Atwater
 City of Folsom
 Fresno Metropolitan Flood Control District
 City of Ceres
 City of Arvin
 Mendocino Coast Hospital District
 Tahoe Forest Hospital District
 City of Calexico
 Washington Township Hospital District
 County of Celuse
 Housing Authority of the County of Stanislaus
 City of Gustine City
 Meadow Vista County Water District
 City of Arcata
 City of Winters
 Sweetwater Authority
 Delano Mosquito Abatement District
 Helix Water District
 City of Delano
 Aromas Tri-County Fire District
 Bear Mountain Recreation & Park District
 City of Colusa
 City of Lincoln
 Selma Hospital District
 North San Diego County Transit
 Development Board
 County of Placer
 City of Dos Palos
 City of Newman
 Chino Basin Municipal Water District
 City of Coronado
 Dana Point Sanitary District
 Santa Cruz Port District
 City of Bellflower
 County of Santa Barbara

Santa Barbara County Flood Control and
 Water Conservation District
 Laguna County Sanitation District
 County of Solano
 John C. Fremont Hospital District

EFFECTIVE DATE: 12/31/84 (117 agencies)

Merced County Mosquito Abatement District
 Carmel Sanitary District
 Town of San Anselmo
 Bloss Memorial Hospital District
 City of Tracy
 Redbud Hospital District
 Northern San Diego County Hospital District
 Fresno County Waterworks District No. 16
 Monte Vista County Water District
 Happy Homestead Cemetery District
 County of Tulare
 City of Shafter
 Mark Twain Hospital District
 City of Desert Hot Springs
 City of Ming
 City of Angels
 City of Salines
 Town of Hillsborough
 City of Soledad
 Bear Valley Community Services District
 City of San Clemente
 Tahoe City Public Utility District
 City of Lemoore
 City of Rio Vista
 Burney Fire District
 Central California Irrigation District
 Shasta Mosquito Abatement District
 City of Redondo Beach
 Groveland Community Services District
 West Kern Water District

Coalinga-Huron Park & Recreation District
 City of Escalon
 North Bakersfield Recreation & Park District
 Bay Shore Sanitary District
 San Diego County Water Authority
 Salsipuedes Fire Protection District
 North Coast County Water District
 Pioneers Memorial Hospital District
 Big Bear Municipal Water District
 Kern Delta Water District
 Hi-Desert County Water District
 City of Farmersville
 County of Riverside
 Riverside County Flood Control and
 Water Conservation District
 McKinleyville Community Services District
 Walnut Valley Water District
 Rainbow Municipal Water District
 Crescent City Harbor District
 County of Shasta
 San Bernardino County Board of
 Law Library Trustees
 Mojave Public Utility District
 Placer County Water Agency
 Rancho Simi Recreation & Park District
 City of Susanville
 City of Gonzales
 Pico Water District
 Glenn-Colusa Irrigation District
 Housing Authority of the City of Oakland
 City of Greenfield
 North Tahoe Public Utility District
 Pleasant Valley County Water District
 Poseland Fire Protection District
 Truckee Donner Public Utility District
 Placentia Library District
 County of Kings
 City of Alturas

Santa Barbara County Housing Authority
 Yorba Linda District Library
 Mendocino City Community Services District
 Lompoc Hospital District
 Altadena Library District
 Goleta Sanitary District
 Humboldt Community Services District
 North Burbank Public Utility District
 Mountain Gate Community Services District
 Butte County Mosquito Abatement District
 Meiners Oaks Sanitary District
 County of Sierra
 County of Monterey
 County of Inyo
 Chico Area Recreation & Park District
 Pleasant Hill Recreation & Park District
 Donner Summit Public Utility District
 Konocti County Water District
 County of Tehama
 Centerville Community Services District
 Montecito Sanitary District
 Oroville-Wyandotte Irrigation District
 Dublin San Ramon Service District
 Goleta Valley Mosquito Abatement District
 Branciforte Fire Protection District
 Kings River Conservation District
 El Dorado Irrigation District
 City of Red Bluff
 Big Bear City Community Services District
 County of Siskiyou
 Ramona Municipal Water District
 Goleta Water District
 Lindmore Irrigation District
 Heber Public Utility District
 City of Corning
 Crescent Fire Protection District
 City of Mendota
 West Stanislaus Irrigation District

Fallbrook Sanitary District
 County of Nevada
 Montecito Water District
 City of Lake Elsinore
 Town of Yreka City
 Corning Mosquito Abatement District
 Westwood Community Services District
 South Bay Hospital District
 Northwest Mosquito Abatement District
 City of Loma Linda
 City of Ridgecrest
 City of Brawley
 Copperopolis County Fire Protection District

EFFECTIVE DATE: 12/31/85 (3 agencies)

Northern Salinas Valley Mosquito
 Abatement District
 City of San Marcos
 Sacramento Municipal Utility District

JOHN K. VAN DE KAMP, Attorney General
 of the State of California
 N. EUGENE HILL, Assistant
 Attorney General
 PAUL H. DOBSON, Deputy
 Attorney General
 1515 K Street, Suite 511
 Sacramento, California 95814
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 Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF CALIFORNIA

Civil S-83-776 LKK

STATE OF CALIFORNIA, PLAINTIFF

v.

THE UNITED STATES OF AMERICA; MARGARET HECKLER, in
 her capacity as Secretary of the DEPARTMENT OF
 HEALTH AND HUMAN SERVICES of the United States of
 America, and JOHN SVAHN, in his capacity as Under-
 secretary of the DEPARTMENT OF HEALTH AND HUMAN
 SERVICES of the United States of America, and in his
 capacity as Commissioner of the SOCIAL SECURITY AD-
 MINISTRATION of the United States of America, DE-
 FENDANTS

AFFIDAVIT OF CARL J. BLECHINGER, EXECUTIVE
 OFFICER, BOARD OF ADMINISTRATION, PUBLIC
 EMPLOYEES' RETIREMENT SYSTEM OF THE
 STATE OF CALIFORNIA

CARL J. BLECHINGER, being duly sworn, deposes and says:

1. I am the Executive Officer of the Board of Administration of the Public Employees' Retirement System of the California [sic].

2. The Board of Administration of the Public Employees' Retirement System of the State of California (hereinafter "Board") is charged by state law (Cal. Gov. Code, § 22000, et seq.) with administering on behalf of the state, the State-Federal Agreement executed on March 9, 1951, between the State of California and the United States of America pursuant to section 218 of the Social Security Act (42 U.S.C., § 418), and chapter 46 of the Statutes of 1950 (3d ex. sess.) of the State of California. (See Cal. Gov. Code, §§ 22006, 22200.)

3. As Executive Officer of the Board, I have been designated by the Board as California State Social Security Administrator, and as such am the custodian of the records of the State of California with respect to social security coverage under the 1951 State-Federal Agreement.

4. Attached as exhibit A to the complaint filed in this matter, is a true copy of that agreement with five modifications which involve changes to the original master agreement. There have been approximately 1,212 modifications of the agreement which added or deleted particular coverage groups.

5. As of June 30, 1983, the total number of public employees of the State of California covered under social security pursuant to the State-Federal Agreement and subsequent modifications, was 510,789. Out of this total, 103,012 were employees of the State of California. 407,777 were local agency employees. The total public employers with social security coverage in the State of California is 2,505.

During the fiscal year 1982-83, the State of California, pursuant to the State-Federal Agreement and the provisions of 42 United States Code, section 418(f) paid to the federal government a total of \$1,320,311,003.63 in social security contributions. These contributions were paid on covered wages of approximately \$9.85 billion.

6. Attached as exhibit 1 and incorporated by reference herein, is a true copy of a July 15, 1983 letter from the Regional Commissioner, Region IX, of the Social Security Administration, informing the State of California that the federal termination of social security coverage of the employees of the various entities listed in the enclosure of that letter, would not take place because of the passage of the Social Security Amendments of 1983.

7. Attached as exhibit 2 and incorporated by reference herein, is a true copy of a letter dated April 21, 1983, from the Regional Commissioner, Region IX, of the Social Security Administration, informing the State of California that the requested termination of social security coverage for employees of the Sacramento Municipal Utility District, would not be honored because of the passage of the Social Security Amendments of 1983.

8. Attached as exhibit 3 and incorporated by reference herein, is a true copy of a January 31, 1983 letter from the Regional Commissioner Region IX, of the Social Security Administration, informing the State of California that it had received the December 23, 1982 request to terminate social security coverage for employees of the City of Ridgecrest. This letter is a representative example of letters from the Social Security Administration

acknowledging receipt of notices of termination of social security coverage for a coverage group pursuant to the State-Federal Agreement referred to above. With respect to the various entities listed in the enclosure attached to a July 15, 1983 letter, which is designated exhibit A and attached hereto, the State of California received similar acknowledgments of receipt from the Social Security Administration.

I declare under penalty of perjury that I have read the foregoing affidavit and I know its contents to be true and correct, and that if called to testify I could testify of my own personal knowledge as to the above facts.

Executed on this 14th day of October, 1983, in Sacramento, California.

/s/ Carl J. Blechinger
 CARL J. BLECHINGER
 Executive Officer
 Board of Administration
 Public Employees' Retirement
 System of the State of
 California

Subscribed and sworn to before me
 this — day of October, 1983.

 Notary Public In and For the County
 of Sacramento, State of California

EXHIBIT 1

[SEAL]

DEPARTMENT OF HEALTH & HUMAN SERVICES
 SOCIAL SECURITY ADMINISTRATION

Refer To: SD9B1

Region IX
 100 Van Ness Avenue
 San Francisco CA 94102

Jul 15, 1983

Mr. Carl J. Blechinger, Executive Officer
 Public Employees' Retirement System
 P.O. Box 1953
 Sacramento, California 95809

Dear Mr. Blechinger:

The Social Security Act Amendments of 1983 (P.L. 98-21) amended section 218 (g) of the Social Security Act to provide that no coverage agreement may be terminated, either in its entirety or with respect to any coverage group, on or after April 20, 1983, the date of enactment. This amendment prohibiting the termination of Social Security coverage for State and local government employees applies to any agreement in effect on that date. Thus, any agreements which had not already terminated prior to April 20, 1983, may not be terminated.

This letter will serve as your notification that, as a result of P.L. 98-21, the scheduled termination of coverage for employees of the entities listed in the enclosed exhibit will not take place. Should you wish to verify your records with ours, you will find that the entities are listed in the order in which your letter requesting termination of coverage was received by the Social Security Administration. The scheduled date of termina-

tion can be found under the heading "TERM DATE" and the employer identification number under the heading "EIN". The remaining entries were part of our own internal control system, and would not provide any information useful to you. However, if you have any questions about the exhibit or about this letter, please contact Kathy Kirkpatrick of my staff at 415-556-1984.

Sincerely,

/s/ [Illegible]
for PHILIP J. DiBENEDETTO
Regional Commissioner

Enclosure

EXHIBIT 2

[SEAL]

DEPARTMENT OF HEALTH & HUMAN SERVICES
SOCIAL SECURITY ADMINISTRATION

Refer to: SD9B1

Region IX
100 Van Ness Avenue
San Francisco CA 94102

Apr 21, 1983

Mr. Carl J. Blechinger
Executive Officer
Public Employees' Retirement System
P.O. Box 1953
Sacramento, California 95809

Dear Mr. Blechinger:

This acknowledges receipt of your letter dated March 24, 1983, which requested termination of Social Security coverage for employees of the Sacramento Municipal Utility District, I.D. No. 69-0930976. As you know, the President has now signed the Social Security Act Amendments of 1983 into law. Included in this legislation is a provision which bars all voluntary terminations of coverage under section 218 of the Social Security Act. The 1983 Amendments read as follows:

"Sec. 103. (a) Section 218(g) of the Social Security Act is amended to read as follows:

"(g) No agreement under this section may be terminated, either in its entirety or with respect to any coverage group, on or after the date of enactment of the Social Security Amendments of 1983."

- (b) The amendment made by subsection (a) shall apply to any agreement in effect under section 218 of the Social Security Act on the date of the enactment of this Act, without regard to whether a notice of termination is in effect on such date, and to any agreement or modification thereof which may become effective under such section 218 after that date."

This provision bars any voluntary termination of coverage for employees of the Sacramento Municipal Utility District. We will, however, maintain a record of the State's request for termination.

If we can provide any further information, please contact Kathy Kirkpatrick at 415-556-1984.

Sincerely,

/s/ [Illegible]
for LARRY ENGLUND
Acting Regional Commissioner

EXHIBIT 3

[SEAL]

DEPARTMENT OF HEALTH & HUMAN SERVICES
SOCIAL SECURITY ADMINISTRATION

Refer to: SD9B1

Region IX
100 Van Ness Avenue
San Francisco CA 94102

Jan 31, 1983

Mr. Carl J. Blechinger
Executive Officer
Public Employees' Retirement System
P.O. Box 1953
Sacramento, California 95809

Dear Mr. Blechinger:

Your reference: Section SS-900
69-0933234

Your request of December 23, 1982, to the Social Security Administration to terminate Social Security coverage for employees of the City of Ridgecrest, ID No. 69-0933234, has been received. Social Security coverage for these employees will terminate on December 31, 1984, unless the State withdraws its request for termination.

As a reminder, the State may withdraw its request for termination any time prior to January 1, 1985, and continue Social Security coverage. Alternatively, once coverage is terminated, the agreement may not again be modified to include this group. In the meantime the State continues to be liable for contributions on wages paid for services rendered by the employees through the termination date.

We are concerned that groups considering termination give thorough study to the subject because of the very substantial losses that employees may suffer in benefit protection. We believe that Social Security provides a comprehensive plan for employees and their families which generally cannot be replaced by any alternative plan.

We want to assist you in every way, therefore, in advising employees of the City of Ridgecrest about the advantages of Social Security coverage. Kathy Kirkpatrick (415-556-1984) of my staff and Peter D'Anna (916-440-3271) of the district office in Sacramento are aware of this pending termination and are available to work with you.

Sincerely,

/s/ [Illegible]
for JANE PRESLEY
Regional Commissioner

I, Isobel V. Morin, am employed by the Social Security Administration as a Senior Social Insurance Specialist in the Office of Retirement and Survivors Insurance, Division of Coverage, State and Local Branch. My duties involve developing operational policy and procedures regarding the coverage of employees of State and local governments under agreements between the States and the Secretary of Health and Human Services under the provisions of section 218 of the Social Security Act. I can certify from my own personal knowledge that all 50 States, including Maine, Massachusetts, Nevada, and Ohio, have entered into such agreements. Although the original documents are no longer on file in this office, summaries of the coverage contained under these agreements are periodically issued by the regional offices. My personal copies of the summaries for the States in question show that the original agreement with the State of Maine was entered into on December 3, 1951. The original agreement with the State of Massachusetts was entered into on August 13, 1952. The original agreement with the State of Nevada was entered into on November 24, 1953. The original agreement with the State of Ohio was entered into on December 20, 1962. Although the above agreements do not include State employees, they do include employees of one or more political subdivisions of each of these States.

I further certify based on my own personal knowledge that the termination of coverage under the State of Alaska's agreement pertained only to State employees. Employees of a number of political subdivisions of that State continue to be covered under the State's agreement.

/s/ Isobel V. Morin
ISOBEL V. MORIN
Social Insurance Specialist
QRSI, DC, State & Local Branch

/s/ Dianne J. Cheverie
Notary

Commission Expires 7/1/86—Oct. 28, 1983

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

No. CIV S-83-406-LKK

PUBLIC AGENCIES OPPOSED TO SOCIAL SECURITY
ENTRAPMENT, *et al.*, PLAINTIFFS

vs.

MARGARET HECKLER, Secretary, Department of
Health and Human Services, *et al.*, DEFENDANTS

AFFIDAVIT OF HARRIS G. FACTOR

I, Harris G. Factor, being duly sworn, depose and say as follows:

I am Director of the Office of Regulations, Social Security Administration (SSA), Department of Health and Human Services. The Office of Regulations is responsible for supplying information regarding litigation involving the SSA.

Section 218(a) of the Social Security Act ("the Act") requires the Secretary of Health and Human Services at the request of any state to enter into an agreement with such state for the purpose of extending the insurance system established by title II of the Act to services performed by individuals as employees of such state or its political subdivisions. Section 218(c) of the Act makes such an agreement applicable to any "coverage group" designated by the State. Section 218(e) of the Act requires that an agreement provides that the state periodically will make payments to the Secretary of the Treasury equivalent to the sum of the social security

taxes that the Internal Revenue Code would impose on private sector employers and employees. The states also provide information with respect to the wages paid to their employees, and that information serves as a basis for crediting employees covered by section 218 agreements with social security coverage identical to that provided to similarly paid workers in the private sector.

Until enactment of section 103 of the Social Security Amendments of 1983, Pub. L. 98-21, section 218(g) of the Act had allowed either the Secretary or a state, upon at least 2 years' notice (and under certain conditions), to terminate an agreement, either in its entirety or with respect to any coverage group. A termination by a state was to be effective at the end of a calendar year specified in the notice. Section 103 of Pub. L. 98-21, however, has amended section 218(g) of the Act to preclude any further agreement terminations, whether by the Secretary or a state.

Information with respect to social security coverage and payments under section 218 agreements has been compiled and examined by employees under my supervision. Examination of that information shows as follows:

- 1) But for enactment of section 103 of Pub. L. 98-21:
 - a) Agreements with respect to 287 governmental entities would terminate at the end of 1983. These entities employ approximately 104,000 persons, and as a result of their coverage the states will have paid approximately \$149 million for 1983. Assuming no significant change in wages for 1984, approximately this amount of revenue would be lost to the social security trust funds in 1984 if these 287 terminations take effect at the end of 1983.
 - (b) Parallel statistics with respect to the State of California are 71 entities, approximately 33,750 persons, and approximately \$33.7 million.

2) Payment of wages to a worker for services performed under a section 218 agreement entitles that worker to be credited on the Secretary's records with earnings. Termination of a section 218 agreement ends a worker's entitlement to this crediting for wages for services subsequently rendered. The Secretary's earnings records affect determination of entitlement to benefits when a claim is filed. If benefits are awarded, these records also affect the amount of benefits payable. Any benefit claimant whose claim is affected by an absence of recorded earnings for a particular time period, who later (within time limits established by section 205(c) of the Act) can show material earnings in the pertinent period, may obtain readjudication of that claim.

(Figures herein are approximate.) According to statistics for 1982, there were 116 million workers covered by title II of the Act. There were 4.4 million title II claims filed, a rate of 3.8 claims per 100 covered workers. There were 3.9 million title II claims awarded, a rate of 3.4 awards per 100 covered workers. Projecting these rates into 1984, and applying them to the workers described in by [sic] the preceding paragraph, *i.e.*, workers whose services would not be covered by a section 218 agreement in 1984 but for section 103 of Pub. L. 98-21, it can be estimated that the Secretary will, with respect to such workers, receive 3,952 claims and make 3,536 awards; with respect solely to such workers covered by the California agreement, there will be an estimated 1,282 claims and 1,147 awards. If the Secretary in adjudicating these claims is enjoined throughout 1984 from considering the amounts earned after 1983 under the section 218 agreements currently applicable to such workers, and if later it is finally judicially determined that these agreements did not terminate at the end of 1983, each claimant who has received an adjudication based in any respect upon a lack of post-1983 earnings

under a section 218 agreement will be entitled to request a readjudication reflecting such earnings.

/s/ Harris G. Factor
HARRIS G. FACTOR
Director
Office of Regulations
Social Security Administration
Department of Health and
Human Services

Subscribed and sworn to before me this 6th day of December, 1983.

/s/ Diannie J. Cheverie
Notary Public

My Commission Expires: 7/1/86

ERNEST F. SCHULZKE
660 J Street, Suite 443
Sacramento, CA 95814
(916) 441-2222
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Case No. CIV S-83-406-LKK

PUBLIC AGENCIES OPPOSED TO SOCIAL SECURITY
ENTRAPMENT, (POSSE), *et al.*, PLAINTIFFS

v.

MARGARET HECKLER, Secretary, Department of
Health and Human Services, *et al.*, DEFENDANTS

STATE OF CALIFORNIA)
COUNTY OF EUREKA)

AFFIDAVIT OF ALICE HARRIS IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION

ALICE HARRIS, being duly sworn, deposes and says:

1. I am Assistant to the City Manager of the City of Arcata, State of California.
2. I have performed my present duties for the past seven years.
3. My duties include the preparation of a budget for the City of Arcata and supervision of expenditures. In the course of my duties I have become intimately

familiar with the fiscal needs and problems of the said city.

4. Since the enactment of Proposition 13, the City of Arcata has experienced a diminishing of financial resources to deal with the infrastructure of the city. That infrastructure includes the building and maintenance of streets and roads.
5. Since the passage of Proposition 13, the city has grown from 12,000 to 14,500 (approximately) inhabitants. This is an increase of roughly 20%. There has been a corresponding increase in need for basic services.
6. During the same period, the number of full time employees of the city has decreased from 85 to 73 persons, a decrease of approximately 14%. There has been no corresponding increase in other types of employees.
7. The decrease in personnel is the direct result of lack of funds. The work which formerly was there, still is there to be done, in greater quantity. Because the City lacks funds the people cannot be hired to perform the necessary services.
8. The lack of funds also resulted in the inability of the City of Arcata to provide for its remaining employees an increase in compensation for the years 1978-1979 and 1981-1982. With the impact of inflation, this relative reduction in take home pay, had a devastating effect on the budgets of city employees.

It was noted that city employees were covered by both PERS and Social Security, with the financial burden such double coverage implies.

The employees initiated the discussion which culminated in the decision to terminate their Social Security coverage.

9. Their reason for terminating their Social Security coverage was twofold. First, it was decided that the funds which would no longer be used for Social Security could in part be used to augment their take home pay. Second, the funds could be used to avert further layoffs, which are certain to occur if more money is not made available. It is projected that at least five more employees will be laid off if termination of Social Security is not allowed. That represents nearly seven percent of the remaining work force. The Arcata area is a depressed one with an approximate 15% unemployment rate. Options for reemployment of these laid off individuals are virtually nonexistent in this area.
10. The fiscal crisis in the City of Arcata is making it impossible to perform essential municipal services in many respects. Paramount among these is the building and maintenance of streets and roads. The inability to purchase such materials will force the layoff of additional employees who would be engaged in road maintenance, and is causing a noticeable deterioration in the said streets and roads. Such deterioration is apparent to the residents of the City of Arcata and others who use said facilities.
11. To give the Court additional insight into the nature of the fiscal crisis the City of Arcata faces, I have prepared some documentation which is marked Exhibit A, is attached hereto and is incorporated herein by this reference.
12. I am firmly convinced that unless the requested preliminary injunctive relief is granted, irreparable harm will result in that city services will be further disrupted and/or discontinued, more layoffs will occur and the fiscal crisis will escalate. The said harm will occur before this lawsuit can be resolved, making any judgment of the Court in favor of the City

of Arcata moot, and making any perceived remedy at law clearly inadequate.

I declare under penalty of perjury that I have read the foregoing Affidavit and know its contents to be true and correct.

WHEREFORE, affiant respectfully requests that the Court enter an Order granting the requested Preliminary Injunction.

Dated: December 6, 1983.

/s/ Alice Harris
ALICE HARRIS

Sworn to and subscribed before me, this 6th day of December, 1983.

/s/ Robert D. Cortelyou
Notary Public

EXHIBIT A

CITY OF ARCATA STREET CONSTRUCTION AND MAINTENANCE

Miles of Streets	Year	Allocation from City General Fund	Monies from State of California	Total	Allocation per mile of City street	Allocation per mile/ present dollars
50.4	75/76	189,807	96,654	286,461	5,683	10,302
51.4	76/77	166,614	99,226	265,840	5,171	8,484
52.4	77/78	218,951	109,536	328,407	6,267	9,393
56	78/79	292,230	118,751	410,981	7,338	10,302
60.5	79/80	265,986	106,505	372,491	6,156	7,272
60.5	80/81	167,198	142,636	309,834	5,121	5,454
61.8	81/82	197,959	156,657	354,616	5,738	5,490
62.6	82/83	110,538	190,168	300,706	4,803	4,803

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COMPENSATION

EMPLOYEES—CLASSIFIED SERVICE PER MONTH/5TH STEP

Year	Lowest Compensation	Median Compensation	Highest Compensation
75/76	820	1,161 ^o	1,723
76/77	861	1,219	1,809
77/78	928	1,314	1,997
78/79	928	1,314	2,098
79/80	1,026	1,450	2,314
80/81	1,051	1,560	2,494
81/82	1,051	1,560	2,494
82/83	1,051*	1,560*	2,620*
83/84	1,084	1,608	2,698

^o When this median wage of 75/76 is adjusted by the CPI factor the amount would be \$1830/month for 1983/84.

* City assumes payment of employee's share of PERS.

ERNEST F. SCHULZKE
660 J Street, Suite 443
Sacramento, CA 95814
(916) 441-2222

Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Case No. CIV-S-83-406-LKK

PUBLIC AGENCIES OPPOSED TO SOCIAL SECURITY
ENTRAPMENT, (POSSE), *et al.*, PLAINTIFFS

v.

MARGARET HECKLER, Secretary, Department of Health
and Human Services, *et al.*, DEFENDANTS

[Filed Dec. 14, 1983]

STATE OF CALIFORNIA)
COUNTY OF PLACER)

AFFIDAVIT OF RICHARD J. RAMIREZ IN SUPPORT
OF MOTION FOR PRELIMINARY INJUNCTION

RICHARD J. RAMIREZ, being duly sworn, deposes and
says:

1. I am City Administrator for the City of Lincoln, California.
2. I have performed my present duties for the past 2½ years.

3. My duties include the preparation of a budget for the City of Lincoln, and the supervision of expenditures. In the course of my duties I have become intimately familiar with the fiscal needs and problems of the said city.
4. The City of Lincoln is a General Law City, organized pursuant to the laws of the State of California.
5. Since the enactment of Proposition 13, the City of Lincoln has experienced a diminishing of the financial resources necessary to carry out essential municipal services.
6. In November of 1981 the City of Lincoln commenced a diligent cut-back effort in an attempt to avert the anticipated financial crisis facing many small cities like Lincoln.
7. The financial crisis in the City of Lincoln is the result of an increase in population (a 6.5% growth since April of 1982), combined with dramatic increases in operating costs.
8. One of the costs which has placed an increasing burden on the fiscal resources of the City of Lincoln, is the increasing cost of social security.
9. Despite an increasing population, Lincoln was forced in April 1982, to reduce its regular full-time sworn police officer staffing levels by 25%. It continues to operate at that level. During 1982, there was a significant increase in crime in the City.
10. According to statistical data available to me, assaults in Lincoln increased from 17 in 1981 to 40 in 1982. Larcenies increased from 87 to 103. Arsons from none to one. I am informed and believe that at least part of the increase in the stated crime categories is due to the decrease in law enforcement. These crimes inevitably cause irreparable harm to their victims. I believe such harm could substantially be reduced, if Lincoln could raise law enforcement to 1981 levels.

11. The library of the City has reduced its operating hours from six days per week in November, 1981, to four days per week in November, 1983.
12. Unless ways are formed to make additional savings, or increase revenues, further reductions in services will have to be made.
13. The City of Lincoln entered the Social Security program with the understanding and assurance that if the circumstances suggested it, the City would be able to terminate its social security coverage.
14. Lincoln did file timely notice of termination. The said notice was accepted by both the state and federal administrators. Effective date of withdrawal is December 31, 1983.
15. By withdrawing from Social Security, the City of Lincoln could realize savings in excess of \$36,000 annually, while continuing coverage for its employees under the California Public Employees Retirement System (PERS).
16. That saving would enable Lincoln to bring operating levels back to the November, 1981 standard.
17. I am firmly convinced that unless the requested preliminary injunctive relief is granted, irreparable harm will result in that city services will further be disrupted. The said harm will occur before this lawsuit can be resolved, making any judgment of the Court in favor of the City of Lincoln moot, and making any perceived remedy at law clearly inadequate.

I declare under penalty of perjury that I have read the foregoing Affidavit and know its contents to be true and correct.

WHEREFORE, affiant respectfully request that the Court enter an Order granting the requested Preliminary Injunction.

Dated: December 14, 1983.

/s/ Richard J. Ramirez
RICHARD J. RAMIREZ

Sworn to and subscribed before me, this 14th day of December, 1983.

/s/ Teena C. Malm
Notary Public

SUPREME COURT OF THE UNITED STATES

No. 85-521

MARGARET M. HECKLER, Secretary of Health and
Human Services, ET AL., APPELLANTS

v.

PUBLIC AGENCIES OPPOSED TO SOCIAL
SECURITY ENTRAPMENT, ET AL.

Appeal from the United States District Court
for the Eastern District of California

The statement of jurisdiction in this case having been
submitted and considered by the Court, probable jurisdic-
tion is noted.

December 2, 1985